IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.3.2005

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THE HON'BLE MR.JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No.19778 of 2004

Durai Manickam .. Petitioner

Vs.

The Commissioner
Sakkottai Panchayat Union
Sakkotai. .. Respondent

Petition under Article 226 of the Constitution of India praying to issue a Writ of Certioratified Mandamus the relief as stated therein.

For Petitioner : Mr.AR.L. Sundaresan

For Respondent : Mr.N. Subbarayalu

O R D E R

By consent of parties, the writ petition itself is taken up for disposal.

2. The petitioner seeks to challenge the proceedings of the respondent in Na.Ka.A7/2613/04 dated 1.7.2004, to quash the same and to direct the respondent to consider the petitioner's tender schedule for the work of repairing the western portion of the office of Sakkottai Panchayat Union.

3. By the impugned proceedings, the respondent have called for re-tender for carrying out certain repair work in the Panchayat Union Office. According to the petitioner, when the tender was called for earlier, the petitioner submitted his tender and that as far as the Earnest Money Deposit was concerned, he furnished a demand draft instead of National Savings Certificate or Kisan Vikas Certificate. Since the said action of the petitioner was not in accordance with the tender conditions dated 16.6.2004 and no other contractor also submitted the Earnest Money Deposit in the prescribed format, the respondent was obliged to call for re-tender by the impugned proceedings dated 1.7.2004.

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4. Mr.AR.L. Sundaresan, learned counsel appearing for the petitioner would contend that inasmuch as the demand draft is a document which can be easily encashed when compared to National Savings Certificate or Kisan Vikas Certificate, the rejection of the petitioner's tender on that ground cannot be accepted and therefore, the re-tender should not be allowed to take place.

5. Condition No.6 of the tender conditions dated 16.6.2004 is to the following effect:

" ஒவ்வொரு வேலைக்கும் உரிய டேவணித் தொகை தேசிய பத்திரமாகவோ (என்.எஸ்.சி) கிசான் விகாஸ் பத்திரமாகவோ தான் செலுத்தப்படவேண்டும். பத்திரங்கள் 01.04.2004 க்குப் பிறகு பெறப்பட்டதாக இருத்தல் வேண்டும். ரொக்கம், வங்கி வரைவு ஏற்றுக் கொள்ளப்படமாட்டாது. "

6. The petitioner having opted to submit his tender in accordance with the above referred to tender condition, unless and until the petitioner had submitted his tender satisfying all the conditions including condition No.6 as referred to above, it cannot lie in the mouth of the petitioner to contend that the respondent Panchayat Union could have accepted the demand draft. In fact, under the said condition, it has been specifically stipulated that neither cash nor the bankers cheque would be accepted towards Earnest Money Deposit. In spite of such specific stipulation, the petitioner not having satisfied such condition imposed, the non acceptance of the petitioner's tender pursuant to the earlier notification cannot be found fault with. There is absolutely no legality in the stand of the petitioner in approaching this Court for preventing the respondent from carrying out the re-tender process pursuant to the impugned proceedings dated 1.7.2004.

7. In this regard, the reliance placed upon by the petitioner in the judgment of the Hon'ble Supreme Court in PODDAR STEEL CORPORATION v. GANESH ENGINEERING WORKS (AIR 1991 SC 1579) has absolutely no application to the facts of this case. That was a case where after the tender was awarded to a successful tenderer, the successful tenderer offered a bankers cheque to the satisfaction of the principal, while the condition imposed was that the Earnest Money Deposit should be paid in cash. Considering the said situation, the Hon'ble Supreme Court took a view that deposit of cash as well as bankers cheque stand on the same footing and therefore, on that score, the successful tenderer's bid and the acceptance of it, cannot be interfered with.

8. The facts and the circumstances involved in that case has absolutely no comparison to the facts of this case. Here the petitioner wants the condition itself to be varied which cannot be done in a writ petition under Article 226 of the Constitution of India, in the absence of such condition being highly onerous or such a condition is impossible of compliance.

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9. In the above circumstances, I do not find any justification or even bona fide in the stand of the petitioner in seeking to challenge the impugned proceedings of the respondent. I only feel that by the imprudent action of the petitioner in approaching this Court by filing this writ petition and also by stalling the re-tender process for nearly nine months by obtaining interim orders, the petitioner has caused a serious prejudice to the respondent. I, therefore, feel it appropriate to impose cost while dismissing the writ petition. The writ petition therefore fails and the same is dismissed with a cost of Rs.2,000/- to be payable to the respondent within two weeks from the date of receipt of a copy of this order. Consequently, WPMP No.23783 of 2004 and WVMP No.2046 of 2004 are dismissed.

kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

1. The Commissioner
Sakkottai Panchayat Union
Sakkottai.

+ 1 cc to Mr.N. Subbarayalu, Advocate SR 12076

W.P.No.19778 of 2004.

14.3.2005.

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